

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

TYLER TECHNOLOGIES, INC.,

PLAINTIFF,

v.

LEXUR ENTERPRISES INC.,  
ROBERT FRY, JIMMY DAVIS, JOE  
THORNSBERRY, AND JOHN DOES  
1-100

DEFENDANTS.

CAUSE NO. 4:20-CV-00173-TWP-DML

**DEFENDANT ROBERT FRY'S BRIEF IN SUPPORT  
OF HIS MOTION TO DISMISS**

Defendant Robert Fry ("Fry") submits the following brief in support of his motion to dismiss the complaint filed against him by Tyler Technologies, Inc. ("Tyler").

1. Tyler alleges Fry is the Chief Financial Officer of Co-Defendant Lexur Enterprises Inc. ("Lexur"). (Compl., DN 1 at ¶ 15.)

2. On September 29, 2020, Lexur filed its Motion to Dismiss [DN 29] and Brief in Support [DN 30] pursuant to Federal Rule of Civil Procedure 12(b)(6).

3. The same claims asserted against Lexur are asserted against Fry. (*See generally* Compl., DN 1.)

4. The arguments made in Lexur's Motion to Dismiss and Brief in Support equally apply to Fry. For the purposes of judicial efficiency, Fry adopts and incorporates by reference Lexur's Motion to Dismiss and Brief in Support, including

all legal arguments set forth therein. As applied to Fry, those arguments are, in brief, as follows:

(a) According to Tyler's own allegations, Fry and Lexur's alleged actions resulted in the six counties at issue receiving bids from Lexur that were lower and resulted in an additional entrant into the Indiana real estate assessment market. (Compl., DN 1 at ¶¶ 14, 74.) As explained in further detail by Lexur, Tyler thus failed to allege any antitrust injury under the Sherman Act. (*See* DN 30 at IV.A.) Tyler's Sherman Act claim in Count I of the Complaint should, therefore, be dismissed as to Fry.

(b) As also explained by Lexur, the Sherman Act standards are applied to Indiana Antitrust Act claims. (*See* DN 30 at IV.B.) Because Tyler failed to allege any antitrust injury, its Indiana Antitrust claim in Count II should also be dismissed as to Fry.

(c) Count III of Tyler's Complaint alleges claims against Fry for tortious interference with contracts. Again, as explained in further detail by Lexur, the claim fails because Tyler did not allege the required "absence of justification" element. (*See* DN 30 at IV.C.) Tyler instead alleges Lexur and Fry interfered with Tyler's cyclical reassessment contracts so that the contracts would be awarded to Lexur. (Compl., DN 1 at ¶ 103.) Competition is a legitimate interest that establishes justification under Indiana law. Tyler thus failed to properly plead a claim for tortious interference with contracts against Fry.

(d) Tyler's claim for tortious interference with business relationships in Count IV of the Complaint fails for the same reason because "absence of justification" is also a necessary element of this claim. (*See* DN 30 at IV.C.) Additionally, as also discussed by Lexur, Tyler failed to properly plead the illegality element of this claim. (*Id.* at IV.D.) The only illegality identified by Tyler is Fry's purported violation of the antitrust laws. (Compl., DN 1 at ¶ 111.) As established above, Tyler's antitrust claims fail as a matter of law, so those alleged violations cannot somehow support Tyler's claim for tortious interference with business relationships.

(e) Finally, as established by Lexur, civil conspiracy is not a standalone claim. (*See* DN 30 at IV.E.) Because Tyler's other tort claims against Fry fail, Tyler's civil conspiracy claim in Count VI of the Complaint also fails.

5. For the reasons set forth in Lexur's brief in support of its motion to dismiss and as further explained herein, Tyler's claims against Fry should be dismissed.

WHEREFORE, Defendant Robert Fry respectfully requests that the Court grant his Motion to Dismiss, with prejudice, and any and all other relief this Court deems just.

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